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Commenter: WorldCom, Inc.
Applicant: BellSouth
State: Louisiana
December 19, 1997

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of	)	
	)	
Application by BellSouth	)	
Corporation et al. for Provision of	)	CC Docket No. 97-231
In-Region, InterLATA Services in	)	
Louisiana	)	

REPLY COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), through undersigned counsel, hereby submits its reply comments on the Section 271 application for in-region interLATA authority in Louisiana filed by BellSouth Corporation et al. ("BellSouth").

1. PCS providers are not "competing providers" for purposes of Track A.

In its initial comments, WorldCom argued that PCS providers are not "competing providers" for purposes of Track A, because: (1) PCS providers do not connect to the RBOC's network in the same manner as the CLECs and thus do not provide the type of operational experience on the basis of which the Commission may assess whether the RBOC is providing access and interconnection sufficient to support competition; (2) PCS providers serve essentially a niche market, which Congress did not intend as the type of alternative to the RBOC's local exchange service that would demonstrate that the market was open to competition; (3) the conclusion that PCS providers do not "compete" with wireline is consistent with sections 271(b)(3) and (g)(3), which allow RBOCs to provide CMRS (including PCS), but not wireline service, as "incidental interLATA services" without obtaining Commission approval under

section 271; and (4) that conclusion is also consistent with the purpose of section 271 and the 1996 Act, which was to give the RBOCs an incentive to let previously excluded carriers into the local exchange market (PCS providers were not previously excluded).

Ameritech's comments argue that the Commission is legally required to view PCS providers as "competing providers," because (1) PCS falls within the definition of "telephone exchange service," and (2) Congress' specific exclusion of CMRS from Track A means that Congress must have intended to include PCS, under the maxim of "expressio unius exclusio alterius." Ameritech Comments at 4-9. The comments of the Department of Justice also refer to the "expressio unius" maxim as a possible reason for concluding that PCS providers must be viewed as "competing." DOJ Comments at 5-6.

The Ameritech argument is misguided. It addresses whether PCS providers are providers of "telephone exchange service." Section 271(c)(1)(A) requires the presence of a "competing provider of telephone exchange service," meeting certain requirements, to qualify the RBOC for Track A. Even if PCS providers are "providers of telephone exchange service," Track A requires that they must be "competing" providers of telephone exchange service.

Nor is the argument of "expressio unius exclusio alterius" persuasive. The last sentence of section 271(c)(1)(A) provides that CMRS (but not PCS) shall not be considered to be "telephone exchange service." Applying the "expressio unius" maxim might lead one to conclude that PCS was not excluded from the definition of "telephone exchange service," and therefore must be included. But that leaves open the issue of whether PCS is a "competing" telephone exchange service. The last sentence of section 271(c)(1)(A) simply does not address

that issue. Accordingly, even if the "expressio unius" maxim is rigidly applied in interpreting that sentence, it does not lead to the conclusion PCS must be excluded from the definition of "competing" providers.

As the Department of Justice correctly pointed out, the issue of what constitutes a "competing" provider is one that the statute commits to the Commission's discretion under Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). DOJ Comments at 7. The "expressio unius" maxim "'has little force in the administrative setting,' where [the Court] defer[s] to an agency's interpretation of a statute unless Congress has 'directly spoken to the precise question at issue.'" Mobile Communications Corp. of America v. FCC, 77 F.3d 1399, 1404 (D.C. Cir. 1996), quoting Texas Rural Legal Aid, Inc. v. Legal Service Corp., 940 F.2d 685, 694 (D.C. Cir. 1991) and Chevron U.S.A., supra, 467 U.S. at 842. Here, Congress has not "directly spoken" to the question of whether PCS providers are "competing" providers. Consequently, the Commission is free, under Chevron, to interpret the term "competing" in light of the purposes of the statute.[1]

In terms of the purposes of section 27(c)(1)(A), the DOJ comments point to one reason for not treating PCS providers as "competing." As DOJ points out, from the "economic perspective" PCS providers are not "competing" because "PCS is substantially more expensive than wireline service for the great majority of customers." DOJ comments at 8. In addition, as

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[1] The one thing the Commission is not free to do, however, is to ignore the word "competing" entirely. See National Ass'n of Recycling Industries, Inc. v. ICC, 660 F.2d 795, 799 (D.C.Cir. 1981) ("effect must be given, if possible, to every word, clause and sentence of a statute . . . so that no part will be inoperative or superfluous, void or insignificant").

AT&T points out, the PCS customer must pay for equipment designed to offer a capability that is more costly to provide than traditional wireline service, and that most users do not need. AT&T comments at 67. It is well within the Commission's Chevron discretion to interpret the term "competing" from the "economic perspective." Indeed, that is the natural meaning of the term.

Moreover, as pointed out in WorldCom's initial comments, the term "competing" can also be interpreted in light of the purpose of Track A, which was to insure that this Commission and the State Commission could assess whether the RBOC had opened its market to competition in a practical sense, as judged by the operational experience of an existing competitor. As WorldCom pointed out, this purpose is not served by PCS providers, because the PCS modes of access and interconnection to the ILEC network are so different as to make the PCS experience irrelevant to an assessment of whether the network is open to wireline competition. WorldCom comments at 5-8.

The Commission has the discretion to consider the PCS issue in light of these considerations, which are based on the practicalities of the situation and the purpose of the statute, rather than on the artificial and meritless approach to statutory construction urged by Ameritech.

2. BellSouth has not shown that it is providing OSS on a non-discriminatory basis.

In its initial comments, WorldCom pointed out that the ALJ had made findings that BellSouth's LENS system for preordering did not provide competitors the same level of service as BellSouth's in-house personnel, because competitors are limited by LENS to reserving six lines at a time and must utilize manual intervention -- limitations to which BellSouth's in-house

personnel are not subject. WorldCom further argued that the reversal of the ALJ's findings by the Louisiana Public Service Commission ("LPSC") was not entitled to deference, because the LPSC did not address the issues raised by the ALJ. WorldCom comments at 15 -16.

The comments filed by the LPSC do not adequately answer WorldCom's arguments. The LPSC seeks to shore up its conclusions by explaining that three of its Commissioners attended a technical conference at which BellSouth demonstrated its OSS, and states that "[f]ollowing careful consideration and analysis, the LPSC concluded that the Operational Support Systems do, in fact, work and operate to allow potential competitors full nondiscriminatory access to the BellSouth system." LPSC comments at 28. But this statement merely repeats the inadequate finding made in the LPSC decision. Neither that finding, nor the LPSC's statement in its comments, explained why it believed BellSouth's OSS systems provide "full nondiscriminatory access." A generalized finding that ignores specific issues raised by the agency's own ALJ is not entitled to deference. Dodson v. National Transp. Safety Board, 644 F.2d 647, 651 (7th Cir. 1981); Greater Boston Television Corp. v. F.C.C., 444 F.2d 841, 853 (D.C. Cir. 1970).

The inadequacy of the LPSC's comments is especially revealing in light of the fact that the LPSC had the opportunity, before filing its comments, to review the findings of the Florida Public Service Commission (quoted in WorldCom's initial comments at 16-17), which raised the same criticism of the need for manual intervention that the ALJ in this case had raised. It is apparent that neither the LPSC nor BellSouth has an adequate answer to the ALJ's criticism of BellSouth's inadequate and discriminatory OSS.

3. BellSouth has not shown that it provides network elements in a manner allowing them to be combined by the requesting carrier.

In its opening comments, WorldCom argued that BellSouth was proposing to exercise its right to separate combined elements, conferred by the recent Eighth Circuit decision, in a discriminatory manner because it insisted on physical rather than electronic separation, even though the latter was much cheaper and was the method used by BellSouth itself when separating elements for its own internal purposes. WorldCom comments at 20-23. In addition, regardless of the method of separation, WorldCom argued that BellSouth had not given adequate information as to how it would provide requesting carriers the access they would need to combine elements it had separated. While BellSouth had stated that it would allow collocation for this purpose, WorldCom argued that collocation was not legally required for this type of access and, as presently designed, was not appropriate. WorldCom comments at 24-29.

In its comments, the Louisiana Public Service Commission states that it has addressed the issue by requiring BellSouth to include in its SGAT a provision that "[a] requesting carrier is entitled to gain access to all of the unbundled elements that, when combined by the requesting carrier, are sufficient to enable the requesting carrier to provide telecommunications service." LPSC comments at 11.

This new SGAT provision, however, does not address adequately the problems WorldCom raised. All it does is to commit BellSouth generally to provide access. It does not answer the problem of the unnecessary and discriminatory expense caused by BellSouth's proposal to physically separate elements that could be electronically separated instead. Nor does it answer the crucial question of whether the terms of access will be sufficient to give CLEC

technicians an adequate opportunity to combine elements that BellSouth has separated. And finally, the new SGAT provision leaves BellSouth free to insist on collocation as the only means of obtaining access to combine elements, even though, as WorldCom's initial comments show, collocation is neither appropriate nor legally required.

4. Allowing BellSouth into the interLATA market will not foster local competition

Ameritech and the LPSC argue that the reason local competition is not currently thriving in Louisiana is because AT&T, MCI and Sprint deliberately have held back in order to protect their position in the interLATA market. Once BellSouth is allowed in the interLATA market, they argue, that incentive will be removed and AT&T, MCI and Sprint will become vigorous local competitors. Ameritech comments at 2-3; LPSC comments at 20.

That argument is wrong, for two reasons.

First, the argument assumes that the only entities with the "financial and marketing resources to provide effective local competition" are AT&T, MCI and Sprint. LPSC comments at 20. But in fact the Bell Operating Companies themselves have the financial and marketing resources to provide effective local competition. Section 271(b)(2) presently allows them to offer long distance service as well as local service outside their own regions. Thus the Bell Companies presently have the legal authority -- without further FCC action under section 271 -- to offer packages of local and long distance service to customers outside their own regions. Indeed, Ameritech recently announced plans to do just that in St. Louis.[2] WorldCom is also

[2] Ameritech, Press Release, November 6, 1997, "Ameritech to Expand in St. Louis -- Will Give Customer Competitive Choice in Local, Long Distance Phone Services."

aware of instances in Illinois and Texas where a local Bell Company has signed interconnection agreements in areas where another company is the incumbent.[3] In testimony given in September, 1996, the General Counsel of SBC Communications stated that SBC had a competitive presence in Chicago, Boston, Washington, Baltimore and a major part of New York, was "active competitors with NYNEX, Bell Atlantic and Ameritech," and intended to be "a full provider, one-stop provider, local exchange, long-distance and cellular in those places." Hearing of the Senate Judiciary Committee on Telecommunications Competition (Sep. 11, 1996), FNS Transcript at p. 13 (copy attached).

In short, even if AT&T, MCI and Sprint had failed to provide significant local competition only because of a motivation to keep BellSouth out of the interLATA market, the other RBOCs -- as well as GTE[4] -- have no such motivation and have all the financial resources and technical know-how, as well as the legal authority, needed to become significant local competitors outside their regions. But despite the scattered instances cited above, the Bell Operating Companies have not yet provided significant local exchange competition outside their own regions. Clearly, that cannot be because they want to forestall local competition to maintain

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[3] In Illinois, Ameritech has an interconnection agreement with Southwestern Bell. Dkt. No. 96-NA-001. In Texas, Southwestern Bell has an interconnection agreement with Ameritech. Dkt. No. 17782

[4] At the September, 1996 hearing previously described, the General Counsel of GTE stated that "we have filed to compete against other LECs. In Texas we have filed to compete against Southwestern Bell. In California we have filed to compete against PacTel, and we have filed to compete in Virginia and Pennsylvania against Bell Atlantic." See attached transcript of September 11, 1996 Senate Judiciary Committee Hearing at p. 24.

the section 271 barrier to interLATA entry. Ameritech and the LPSC are simply wrong in concluding that the only barrier to significant local competition is a motivation that AT&T, MCI and Sprint might have, but other potential significant competitors surely do not.[5]

Moreover, GTE is not bound by the restrictions of section 271. It can -- and does -- offer interLATA service to cities within its own region; so AT&T, MCI and Sprint can have no possible interest in delaying the growth of local competition in GTE-serviced areas. If Ameritech and the LPSC were right, then AT&T, MCI and Sprint would already be providing significant local competition in those areas -- particularly in urban areas GTE serves (as, for example, Los Angeles, Dallas, Tampa and Fort Wayne). Yet neither BellSouth nor the other RBOCs have shown that significant local competition exists in GTE's service areas, and WorldCom's information is that it does not. Clearly, something else is at work. That "something else" is the fact that local exchange markets, including Louisiana, are not yet realistically open to competition. Letting BellSouth into the in-region interLATA market will only make matters worse, not better, since it would 1) remove any incentive BellSouth now has to open up the local exchange market, and 2) enable BellSouth to offer full-service packages combining local and long-distance service long before any of its potential competitors could do so, thereby solidifying its already overwhelming dominance of the local exchange market.

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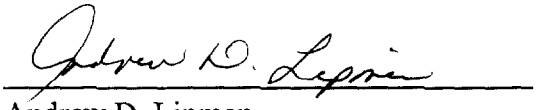
[5] We note a recent ad campaign by BellSouth, deploring the fact that AT&T, MCI and Sprint do not provide service to the North Pole in this holiday season. But the North Pole is not in BellSouth's region. Thus BellSouth has as much legal authority as AT&T, MCI and Sprint, as well as the financial and technical resources, to provide both local and long-distance service there, but apparently has chosen not to do so.

CONCLUSION

For the reasons stated herein and in WorldCom's initial comments, BellSouth's application for interLATA authority in Louisiana should be denied.

Respectfully submitted,



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Dated: December 19, 1997

Commenter: WorldCom, Inc.
Applicant: BellSouth
State: Louisiana
December 19, 1997

Attachment

Hearing of the Senate Judiciary Committee on

Telecommunications Industry Competition

(September 11, 1996)

Excerpts from the testimony of James Ellis,

Senior Executive Vice President of SBC Communications, Inc.

and William Barr, General Counsel, GTE Corporation

FNS Transcript

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HEARING OF THE SENATE JUDICIARY COMMITTEE SUBJECT: TELECOMMUNICATIONS INDUSTRY COMPETITION CHAIRED BY: SENATOR ORRIN HATCH (R-UT) G-50 DIRKSEN OFFICE BUILDING WASHINGTON, DC 2:00 PM EDT WEDNESDAY, SEPTEMBER 11, 1996

SEN. ORRIN G. HATCH (R-UT): Good afternoon. I would like to thank our distinguished panelists for joining us today for what I believe will be an illiminating and lively examination of recent developments in the telecommunications industry. Telecommunications are a very basic, vital element of our daily lives, and at the same time represents one of the most dynamic and exciting arenas of American business today.

From its very earliest days, telecommunications technology has literally revolutionized the way we lead our lives and conduct our business. Imagine how different our lives would be were we unable to telephone our families or fax documents to business associates.

At the same time, we are today on the threshold -- if not in the midst -- of what can truly be considered a revolution in the telecommunications industry. Moreover, this pace of technological change is matched by a breathtaking transformation in the competitive forces in the telecommunications industry. In the wake of the Telecommunications Act of 1996, which promises to unleash previously constrained competitive forces in the telecommunications industry, we read every day of new entrants into the telecommunications field, new joint ventures, mergers, and other business combinations which are working to reshape the telecommunications industry. Perhaps the most noteworthy of the developments since passage of the Telecommunications Act is the emergence of mergers between Bell Atlantic and NYNEX, SBC and Pacific Telesis, and WorldCom and MFS.

All of these developments, of course, contribute to a radically changing competitive environment, and I believe it is important for this committee to exercise its **antitrust** oversight function to keep abreast of the transformations taking place in the telecommunications industry, and to explore how the **antitrust** laws should properly be applied in this emerging new telecommunications age.

Today's hearing is an important first step in exercising this oversight function. By examining these three mergers -- with my primary interests being their ramifications under **antitrust** law as well as their implications for consumers and for competition generally -- this committee will gain a vivid snapshot of what is happening in the telecommunications field, and, I hope, obtain further insight on the proper application of the **antitrust** laws in this context.

While of course these mergers should and will be reviewed by the Department of Justice for a proper assessment under the **antitrust** laws, I should point out that mergers are not in themselves anti-competitive. In an era where we are seeing an increasing globalization of telecommunications services, and in particular the emergence of large global companies and alliances, mergers of domestic telecommunications firms may well help American companies remain competitive in this international arena. Moreover, mergers may contribute significant cost savings and may play an important role in the trend toward combined services or "one-stop shopping" for telecommunications services. All indications are that we will see more and more major telecommunications providers offering a full spectrum of services, including not just local and long- distance but the video, cable and information service technologies as well.

The benefits to consumers that would have resulted from competition between these merging entities will presumably be lost if they are approved. The question is then, will any of the efficiencies gained from the merger be passed on to consumers and, if so, will those savings exceed those possible under a more competitive market.

Mr. Chairman, I ask unanimous consent that the rest of my statement be placed in the record.

SEN. HATCH: Without objection, we'll put it in the record.

Let me use part of my remaining time to ask Mr. Young and Mr. Ellis a question. You both apparently indicated prior to my arriving that you didn't consider your partners as potential competitors. I guess I'm wondering about that because so many RBOCs indicated an interest to compete in each other's market just a few months ago when we were debating the telecommunications bill.

Could you tell me why the markets of your partners aren't attractive to you for any line of telecommunications service, as I understand a lot of long-distance originates in those regions, and as sort of a follow-up, are you considering entering the markets of any other RBOCs? Let's start with Mr. Young.

MR. YOUNG: Yes. Thank you, Senator. One thing I think I do have to take issue with is the assertion that the Bell Companies were the most logical competitors of the other Bell Companies. I'd like to direct you, if I could, to my written testimony. One of the things I tried to do in preparing for this testimony to sort of test that was to go back into 1995 and look at what the Justice Department said, look at what the administration said, look at what the FCC said when they talked about who were the most likely people to get into the local exchange business.

Now, the people they listed were the long distance carriers. They listed wireless companies, they listed cable companies. But, as I point out in my written testimony, you can go through statement

after statement, filing after filing, and the government did not point to Bell Companies as logical competitors to go into other Bell territory. And the reason for that, I think, is pretty logical. The reason is that in considering where you want to expand operations, you want to do that where you already have facilities in place, where you already have customer contacts, where you already have name recognition. That is, for example, in New York, AT&T has that, the cable companies have that, the long-distance carriers have that, a lot of the wireless companies have that. I don't have that. I don't have any significant advantage. So that's why that's not a logical place for me to enter.

SEN. FEINGOLD: Did you have any problem with my representing, though, that the RBOCs had indicated an interest in competing in each other's areas. Is that an accurate statement of what was, in part, part of the discussion?

MR. YOUNG: Senator, as I grow older my memory grows foggier, and the record is what the record is, but that's certainly not my recollection.

SEN. FEINGOLD: Mr. Ellis.

MR. ELLIS: Yes, Senator, I have a little bit different situation in my answer. We, as I said, our files confirm that we had no plans to go into California, and California had no plans, that is Pacific Telesis, to come into SBC's territory. SBC has a presence in Chicago, Boston, Washington, Baltimore and a major part of New York. We are active competitors with NYNEX, Bell Atlantic and Ameritec. I think, by most measures, we are probably among, anyway, their largest competitors, SBC is, no question about it, and we will grow that business in those areas.

We have filed to be a local competitor in New York and in Illinois. We will be a full provider, one-stop provider, local exchange, long-distance and cellular in those places. Our plan, however, and the reason we are not potential competitors with Pacific Telesis is based on this, we believe it's important to have three components present before you move in. One, you need facilities. Two, you need brand

identification and, three, you need customers.

Now, not in every case. You can go ahead and try and go in, but when you have the opportunities we have to pursue the situations I've ticked off, plus others, we had chosen a long time ago not to go into California for those reasons. And our files, the Justice Department has had them, they've looked at them, they are long-standing. That's been our plan. We were not a potential competitor for Pacific Telesis but, indeed, we're a potential competitor in those situations that I've outlined.

SEN. FEINGOLD: Thank you.

Let me go back to Mr. Young for a minute on the sort of specific example of Bell Atlantic and NYNEX. It is a matter of public record that some time prior to the announcement that there were discussions going on. I guess I would like to ask you, did Bell Atlantic first examine the competitive opportunities available to them in the NYNEX region, particularly in the states where your service areas abut one another, was that examined, or did you just go forward with --

MR. YOUNG: The answer to the question is, yes, we did examine that. Actually, you might be misled when you look at a map. You might think that our service territories abut all the way along the New York border all the way along Pennsylvania. Actually, that's not true. A lot of that is independent telephone company territory. Really, it's just New York and across the river to New Jersey.

We looked at that, but we concluded pretty much along the lines that Mr. Ellis described, that it wasn't worth the candle for us to go in because we did not have facilities in New York. We didn't have a customer presence, and we didn't think we had anything significant by way of brand identification. Even there you might say to yourself, okay, but look, we have telecommunications facilities in Northern New Jersey, wouldn't we think we had some advantage and we could just extend the wires under the river and use that plant that we had in New Jersey to serve in New York, but we found out that it was that that was not the economical thing to do.

There is already so much traffic in New Jersey and the area that you can serve with those facilities in New Jersey, because of the traffic loads, you really can't extend into New York. So, yes, we did have a careful look at it, but we decided long before the merger discussions this was not a market we wanted to enter.

SEN. FEINGOLD: Do I have more time, Mr. Chairman? Just one more question, if I may?

Thank you very much, Mr. Chairman.

Just to follow on sort of what you were talking about there, you wouldn't have done this merger if it didn't involve sufficient cost

efficiencies to be gained. And I saw in your press materials at the time of the merger announcement that the Bell Atlantic-NYNEX merger will result in cash savings of $900 million a year.

Your press materials reported that would result in substantial shareholder value, but as far as I saw it didn't mention the benefits to consumers. How specifically will those cost savings be passed down to consumers, and what do you anticipate the average savings might be to ratepayers, and how soon might those savings be realized?

MR. YOUNG: Well, look, if I could take that question in pieces. First of all, even before the merger, we think we've been doing a good job in passing along our efficiencies to our customers. We have, in Bell Atlantic, in almost all our states, NYNEX has in almost all their states -- one exception is Vermont where it is being negotiated -- price cap plans that basically freeze residential rates, guarantee that over the life of the plan those rates will go down compared to inflation. Now, that's really sharing cost savings with customers.

One other area, though, where I think customers are really going to see the benefit here is in new

SEN. LEAHY: Did you feel that in Vermont people wouldn't know who Bell Atlantic was?

MR. YOUNG: Compared to AT&T and MCI and Sprint, no. We think our brand recognition is substantially lower. You also look at things like, do I have --

SEN. LEAHY: We even get newspapers up there, you know. We're out in the backwoods, but we do know --

MR. YOUNG: Senator, I grew up in the country, too. So I appreciate that. But you also look at other factors like, do you have facilities there? Do you already have customer contacts and business relationships with significant customers? When you look at a market like Vermont, we don't. So that's why, when we look at a decision like that, that's the reasoning behind it.

SEN. LEAHY: But intense competition was not one of the reasons then?

MR. YOUNG: Well, I'll take your word for what the filing said.

SEN. LEAHY: I'm not talking about the filing. Are you saying that, would intense competition not be a reason?

MR. YOUNG: Well, certainly, if I thought there was a good market and I could be the first one in, sure, I'm going to be more anxious to be that, to get into that market than if I think there's a market with three people or four people or seven people already in there providing service. I think that's only logical.

SEN. LEAHY: Wouldn't everybody?

MR. YOUNG: I think so.

SEN. LEAHY: If you could have the monopoly, you'd rather be there.

MR. YOUNG: I'm not talking about a monopoly, I'm talking about maybe being the first one in to compete with a monopolist.

SEN. LEAHY: We're going to have more monopolies to compete with as we go along, it appears to me, but let m ask this, the Telecommunications Act was expected to create this environment in which companies would compete in each other's markets. I'm told that a number of long-distance companies and local access providers have filed for interconnection to the local phone networks of incumbent Bell Companies in order to bring some kind of competition to the local loop. The Bell Companies, of course, can do the same thing, but they haven't.

Mr. Ebbers, as I read your written testimony, you point out the irony that despite their expertise in providing local phone service "not one of the Bell's application to offer service in an out-of- region state request certification as a local carrier." Am I being fair?

MR. YOUNG: That's fair.

SEN. LEAHY: Is it correct that no Bell Company has filed for interconnections as a local carrier outside their own service territory?

MR. ELLIS: That's not correct, Senator. It's not. Southwestern Bell, SBC Communications has filed in Illinois and New York.

SEN. LEAHY: They really filed for long-distance, and you don't have to file a separate filing for local, so it kind of goes automatically in those two states.

MR. ELLIS: That is not correct, Senator. We have filed to obtain a certificate to provide local exchange

telephone service in Illinois and New York.

SEN. LEAHY: Both of you gentleman will, at some point, and the staff will providing your testimony, if either one of you want to add to that or add anything to me, feel free, but when was this, Mr. Ellis, Illinois?

MR. ELLIS: It was shortly before, and the record will be what it is, but I believe it was before the legislation was passed.

SEN. LEAHY: Okay. And that's the only one?

MR. ELLIS: Those are the two, Senator. I'm not sure if you were here, but I said our plan, our practice, has been to file where we have network facilities, to compete where we have network facilities, where we have brand name, Cellular One in Chicago, Cellular One right here in Washington, D.C., where we have customers. That's where we -- that is the strategic plan that has been SBC's for a long time. Several years ago the Department of Justice interviewed, deposed our people in connection with the motion to vacate. That was the testimony then, and we've acted on that plan.

SEN. LEAHY: Will we see more Bell Companies trying to expand local service under the Telecommunications Act? Too young to predict? Mr. Young?

MR. YOUNG: Well, let me say this. One, I think that -- yeah, I think you come back to the criteria that both Mr. Ellis and I have been talking about.

If a local exchange carrier or any other carrier has a logical platform in any particular local service area that allows them to enter, if they have facilities, if they already have customers there, if they have significant brand recognition, if they have several of those elements, yes, I think you'll see that. If they don't have those elements, then I think it's a tough thing to do.

SEN. LEAHY: Would you agree with that, Mr. Ellis?

MR. ELLIS: Well, I would say, Senator, that you're going to have -- we've got a lot to deal with, as I mentioned, we have 115 request for competitors to come in and provide local exchange in our five telephone states, and approximately 100 in California, and they're the biggies as well as the small ones. And so I think we will look in accordance with our strategic plan at each situation, will we come to Washington, I don't know, and I don't know the timetables.

SEN. LEAHY: So you're saying it would be a case- by-case situation?

MR. ELLIS: Within the criteria I said. One other thing, Senator, I would like to point out, the problem that Mr. Ebbers and others have talked about in terms of competing for local exchange is, in part, a product of the fact that historically local telephone rates have been kept very low. In Texas, for example, the state regulators have decided that the Texas telephone rates for 24-hour a day service is less than $10. Now, we didn't choose that. That was imposed. That was the Texas regulatory policy decision. I wish they could be closer to cost, but that's what it is, so I can understand anybody coming in and saying, whether you have 20 percent discount off of $10 or what you have, that that is a problem. But it's not a problem that is a result of something in SBC Communications.

SEN. LEAHY: If I was at all parochial I would say, you have to have some advantage to living in Texas, but I'm not going to say that.

Mr. Ebbers, did you want to add anything to this series?

MR. EBBERS: No, sir.

SEN. LEAHY: I take your point, Mr. Ellis. I don't mean to be flippant on that.

Atlantic wasn't interested in New York and SBC wasn't interested in the business in California, why are they buying these companies?

This is, in fact, precisely the justification Bell Atlantic gave some years ago when it tried to merge with TCI. At that time Bell Atlantic's economists said that the only possible purpose and consequence of the merger would be to mount a direct competitive challenge across the board to the incumbent telephone companies, predominantly other BOCs.

They're not saying that now. Why not -- if I just might quickly conclude. The reason is that if they go into the other territories and demand interconnection, the other -- If Bell Atlantic went into NYNEX's territory, or if Southwestern Bell went into Pacific's, then the other companies would retaliate. They would demand interconnection from the other company and they would immediately start competing against each other, bringing local competition that much quicker.

The answer to the monopolist dilemma, Mr. Chairman, was to merge, not compete.

Thank you.

SEN. THURMOND: Mr. Barr.

MR. BARR: Thank you, Mr. Chairman. It's a privilege to appear here today before the committee. As you know, I represent GTE corporation, and in a way we don't have a dog in this fight because we're not involved in a merger. We are a local exchange company, we're not part of the Bell group. We operate in 28 states and after the legislation was passed we have now started offering long distance. We're in 20 states offering long distance, adding 6,000 customers a day to that line of business.

In addition, we have filed to compete against other LECs. In Texas we have filed to compete against Southwestern Bell. In California we have filed to compete against PacTel, and we have filed to compete in Virginia and Pennsylvania against Bell Atlantic.

So from a narrow business perspective, it's not in GTE's interest to see these two mergers occur, to the extent that they create more formidable competitors for us. But we're not here to plead a special case and try to derail potential competitors. What we are trying to do is help this committee's assessment of the **antitrust** implications of these mergers.

I see no basis for concern from an **antitrust** standpoint.

Clearly, as far as the local exchange is concerned, the proper analysis is that potential competitors -- and I've heard the two companies involved, or the four companies involved, saying they did not have plans, and I take them at face value and certainly the Justice Department will review the documentation. But even that is not the critical issue.

The critical issue is whether or not they are singularly suited and uniquely qualified to be the principal competitor of each other and that clearly is not met. The test really is, does the prospect of developing competition up in NYNEX's market rest really on the shoulders of Bell Atlantic. And to suggest that it does is simply nonsense, has no bearing in the real world.

There are numerous existing entrants already and there are numerous potential entrants that pose a far greater competitive threat to NYNEX and Bell Atlantic than those two companies do, and the same with respect to SBC.

As far as the inter-LADA (ph) market is concerned, the argument really is a dusted-off version of the antiquated bottleneck argument that somehow they will unfairly leverage their position in the local market, to gain advantage in in inter-LADA (ph). Let me just say that now that we have equal access in effect, now that we do have emerging competition, and now, on top of those things, that we have a 14-point checklist that the RBOCs have to meet before they're allowed into long distance, that argument for bottleneck really evaporates. We're not talking about a bottleneck any more.

Let me just say that there's been some skepticism about whether or not there is actual competition in the local market, and I'd like to use Senator Leahy's example because I think it really offers a very good illustration. The fact is, Senator, here in Capitol Hill you do have a choice of what phone to use, and I think it's amusing. I was very amused that Mr. Ebbers was sitting here acting as if there was no local competition.

This is a very profitable center here, Capitol Hill. You can imagine all the calls that are made from here. The fact is, Bell Atlantic doesn't serve it. It was taken away by MFS. It is being served by a (cap?). That's where the margin is, that's where the competition is.

Now up in Vermont, I don't know for a fact, but I would bet that you are being subsidized. The money you pay every month for local phone service is not covering the cost. The person who's picking up the difference is a business in Vermont, such as Ben and Jerry's. I'll bet you right now, Ben and Jerry's has a choice, and I'll bet you they're (caps?) and they're trying to get Ben and Jerry's business. No one's interested in your business, Senator, because you're not paying cost.

SEN. LEAHY: Both Ben and Jerry can afford it a lot better than I can. (Laughter.)

MR. BARR: Let me just say that I think the overall point shouldn't be lost. I think we're in a time warp. And my overarching concern about how you're looking at telecom deals is, don't get locked in the mind frame of 1984 and the theoretical problems that were identified then. Look at what's happening today.

I think when you see what the FCC order does -- it's a radical overturning of what Congress tried to do in the Telecommunications Act. What it does is it says that Congress said that when people come in and try to set up competition and set up facilities and they want to piece together a network, they have to pay the cost to the incumbent facility-based LEC.

The FCC has come along and said, no, what you have to do is, you're enabled to pay a very deep a discount, more than 40 percent, for their facilities. This really converts the local exchange company into a wholesale platform, and when you look at who's going to be powerful in the game of packaging services that are essentially bought from a wholesale provider and labeling them is the companies with the brand names and the customers. Those companies are the IXEs principally right now.

With that, I'll stop my prepared remarks.

SEN. THURMOND: I'll be glad to hear from Mr. Atkinson.

MR. ATKINSON: Thank you, Senator Thurmond and Senator Leahy.

Teleport Communications Group is pleased to testify today on the impact of the mergers of Bell Operating Companies on local exchange competition. As background, TCG is the nation's leading competitive local exchange carrier, or CLEC. We operate in California in competition with Pacific Telesis. In Texas and Missouri we're in competition with Southwestern Bell, and in most of the states in the NYNEX and Bell Atlantic regions.

From ten years of experience, we draw the following conclusions about these mergers. The BOC mergers will cause chaos, confusion, and distraction within the resulting Big Bell, leading to substantially worse operational performance by that Big Bell. In particular,

service intervals, quality and reliability are likely to deteriorate substantially, at least for a number of years. This will be terrible for all consumers.

Ironically, because BOCs will continue to control unique, essential services and facilities for the foreseeable future, CLECs are becoming more dependent on the performance of the BOC as they grow and expand. Consumers hold CLECs accountable when a BOC service or facility used by the CLEC fails. Consequently, a substantial deterioration of a Big Bell's operational performance will increase the

Commenter: WorldCom, Inc.
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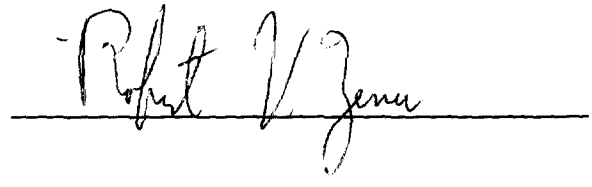

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